THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.35 OF 2007

DATED 26th MARCH, 2007

BETWEEN:

Smt.Andal Raghavan, W/o.Dr.Ramjee

… Petitioner

AND

The Deputy Commissioner, Endowments Department, kakinada.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.35 OF 2007

ORDER:

Sri Bala Venkateswara Swamy Temple, Tallamudunurupadu Village of Tadepalligudem of West Godavari District (hereafter called, the subject temple) is the religious institution registered and classified under Section 6(b) of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity). Historically, it is about 200 years old temple established by Sriman Raghavacharyulu, and statedly temple is being managed by his successors. After coming into force of A.P. Charitable and Hindu Religious Institutions (Amendment) Act, 2002 (A.P.Act No.27 of 2002), the respondent herein by proceedings in R.C.No.B5/2006, dated 17.06.2006, decided that Smt Andal Raghavan – petitioner herein; is member of founder's family. Be it noted, by reason of Section 17 of the Act as amended by Amendment Act No.27 of 2002, the member of the family of the founder shall be appointed as one of Board of Trustees and under Section 21(b) of the Act, such member shall be the Chairman of the Board of Trustees. That is the purport of Section 15 read with Sections 17 and 20 of the Act. The facts or the legal position are not disputed in this writ petition.

The respondent herein issued notice for the constitution of Board of Trustees vide R.C.No.B5/18976/2006 (Admn.) dated 14.12.2006 inviting applications in the prescribed Form-II of the A.P.Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987 under Section 17(3) of the Act. The applications were to be made within twenty (20) days from the date of issue of notice. This notice is assailed in the writ petition. The petitioner prays for a writ of Certiorari to quash the notice issued by the respondent. The petitioner alleges that her application under Section 154 of the Act seeking exemption from the operation of Section 15 of the Act is pending with the Government and pending decision, a Trust Board cannot be appointed. It is also the contention of the petitioner that in the earlier Notification, dated 10.10.2006, the respondent fairly mentioned that there is a hereditary trustee for the temple and the same was omitted in the impugned notice with a view to eliminate the petitioner from chairing the Board of Trustees, which is contrary to the Judgment of the Supreme Court in **Pannalal Bansilal v State of A.P.,**[1]. It is further contended by the petitioner that at the behest of the local M.L.A., who proposed seven persons of his choice to be appointed as Chairman and Members of the Trust Board, the notice

was issued to exclude the petitioner.

At the stage of admission itself, the respondent filed counter affidavit. The following averments in the counter affidavit may be noticed. As per Section 17 of the Act, a founder or member of the founder's family can be considered for being appointed as one of the trustees, but the member of founder's family cannot be allowed to be represented through an agent or deputy. Initially, a notice was issued on 10.10.2006 inviting applications to constitute the Board of Trustees for the subject temple. By Orders, dated 27.10.2006 passed in W.P.No.22214 of 2006, the said notice was set aside by this Court giving liberty to the respondents to issue notice in accordance with the provisions of the Act and the Rules. Though the petitioner made an application under Section 154 of the Act seeking exemption, the Government have not passed any interim orders prohibiting constitution of Trust Board and therefore, as required under Section 15(2) of the Act, action is initiated for constitution of Board of Trustees. Unless and until, a person claiming to be a member of the founder family is qualified for being appointed as one of the trustees, such person cannot enforce the right of being one of the trustees. There is no necessity to incorporate the status of the petitioner in the impugned notice. The allegation that notice was issued at the behest of the local M.L.A., is denied. No reply affidavit is filed by the petitioner.

Learned counsel for the petitioner besides reiterating petitioner's position submits that when once a person is recognized as a founder family, there is no necessity again to make an application in Form-II. According to the counsel, the competent authority as per Section 15 of the Act is bound to appoint a person, who is recognized as a founder or member of the founder's family whether or not such person makes an application in Form-II as otherwise the notice in Form-I as well as the appointment of Board of Trustees would be rendered illegal. Learned Assistant Government Pleader for Endowments as well reiterated submissions made in the counter affidavit. She placed reliance on the instructions issued by the Commissioner of Endowments vide circular No.40/97 in Rc.No.L/36330/97, dated 04.10.1997 and submits that keeping in view the judgment of the Supreme Court in **Pannalal Bansilal Patil v State of A.P.**[2] and Section 17 of the Act, all the appointing authorities were directed to incorporate in the notice inviting applications, that founder or member of the founder's family may also send application for trusteeship in the prescribed Form No.II. Therefore she would urge that even a member of the founder's family is required to submit application after issue of notification in Form No.I.

The only point that arises for consideration is whether a person who is/was recognized as a founder or member of the founder's family is entitled for being appointed as a trustee and chairman of Board of trustees even when such person does not submit the application seeking such appointment?

The Act repealed 1966 Act. By Section 16 of the Act the rights of a person in the office of the hereditary trustee shall stand abolished from the commencement of the Act. Section 16 reads as under.

> **16. Abolition of hereditary trustees**:- Notwithstanding any compromise or agreement entered into or scheme framed, or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, **the rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement.**

Therefore no hereditary trustee of a charitable or Hindu religious institution can claim any right to the office which hitherto was enforceable right. When the right is abolished by the statute, the hereditary trustee is divested of all rights including the right for being appointed as hereditary trustee though such person can be considered for being appointed as trustee of non-hereditary Board of trustees.

The Act was subject matter of challenge before the Supreme Court in **Pannalal Bansilal** (supra). Various provisions including Section 16 of the Act were upheld as constitutionally valid. The Supreme Court also observed that though hereditary right in trusteeship was abolished, the appointment of a founder or member of the founder's family would effectuate object of religious or charitable institution and also effectuate proper and efficient management of the institution. Keeping in view these observations A.P. Legislature introduced amendments by A.P. Act No.27 of 2002 in Sections 17 and 20 of the Act. Under Section 17 of the Act, founder or one of the members of the founder's family if qualified as prescribed shall be appointed as one of the trustees and as per Section 21(b) of the Act such founder or member of the founder's family shall be appointed as chairman of the Board of trustees. By reason of the conferment of the statute under the provisions of Sections 17 and 20 of the Act, the right of a person to be member of non-hereditary Board of trustees now does not flow to a member of the family of the hereditary trustee. It is no more customary right or a right flowing from the deed of enjoyment or deed of settlement of trust. It is a right conferred by the statute even though the amendment by the Legislature was prompted by the

observations of the Supreme Court.

The law provides as to how the right to be appointed as a trustee of non-hereditary trust Board, is to be claimed or enforced. Section 2(19) of the Act defines the term 'prescribed' means prescribed by the Rules made by the Government under the Act. The proviso to subsection (1) of Section 17 of the Act is to the effect that founder or member of the founder's family shall be appointed as one of the trustees as prescribed. Be it noted when once in exercise of the Rule making power the Government makes delegated legislation the same forms part of the main statute. Hence the right of the member of the family of the hereditary trustee for being appointed as a trustee is a statutory right enforceable only in accordance with the Act and the Rules. The Rules were promulgated by the Government in exercise of their powers under Section 153 read with Section 17(3) of the Act, which as noticed above, lays down that the procedure for calling for applications for appointment of trustees, verification of antecedents and other matters shall be as may be prescribed. There are eight Rules dealing with the appointment of trustees. Rules 3 to 5 contemplate the issue of notice in Form No.I inviting applications from qualified persons for being appointed as trustees of the trust Board of a religious institution. Rules 6 and 7 deal with verification of the antecedents of the applicants and scrutiny of applications along with the report of the officer verifying the antecedents. Rule 8 lays down that the competent authority shall have due regard to the qualifications and disqualifications for trusteeship laid down under the Act. It also contains guidelines to be followed by the competent authority in selecting the trustees from among the applicants. The selectee must be service minded, capable of devoting sufficient time to the affairs of the institution, have interest and faith in the institution, and normally a resident of the locality enjoying the respect and esteem in the area. The order of appointment shall be in Form No.III. Be it also noted that Section 18 of the Act prescribes qualifications for trusteeship and Section 19 of the Act enumerates disqualifications for trusteeship. Keeping this in view while making application in Form No.2 as per Rule 5(1) of the Rules, every applicant has to make a declaration that he is qualified under Section 18 and not disqualified under Section 19 of the Act. In Form No.II, every applicant is required to fill up a column, which reads: "other relevant particulars if any which the applicant desires to bring to the notice of the appointing authority".

The declaration of a person as founder or member of the founder's family under Section 87(1)(h) of the Act by the Deputy Commissioner of Endowments or by any competent authority before coming into force of Section 87(1)(h), is altogether different from the

appointment of a qualified founder or a qualified member of the founder's family as trustee under Section 17(1) of the Act (see **G.Rajendranadh Goud v State of A.P.**[3]). Every founder or member of the founder's family cannot be said to have an enforceable right for being appointed as a trustee or chairman of trust Board. As a matter of course, such person has to fulfil the qualifications in Section 18 of the Act and Rule 8 of the Rules and should not incur disqualification under Section 19 of the Act. Further even in a case where the number of applications received by the competent authority is equal to the number of trustees to be appointed, even then no application can be said to have any right for appointment. The antecedents of all the applicants got to be verified by the subordinate officers and the verification report has a bearing on the exercise of the power by the competent authority. Therefore unless and until the application is made by the person claiming to be founder or member of the founder's family giving all the details in Form No.II and unless and until the antecedents of such person are verified by the verification officer, such person cannot be appointed as a trustee. Rule 7 of the Rules clearly lays down that, "competent authority shall scrutinize the applications along with the report of the verifying officer and pass orders appointing trustees''. Therefore the submission of the learned Counsel for the petitioner that there is no necessity for the founder or member of the founder's family to apply in Form No.II under Rule 5(1) of the Rules, after publication of notice in Form No.I, cannot be countenanced. If the same is accepted and a member of the founder's family is appointed without there being an application, it would lead to number of complications besides showing up problems and difficulties in a case where there are more than one recognized member from the founder's family.

Jurisprudentially also the submission is devoid of merit. A right which inheres in a person would cast a duty on the person not to violate such right. If there is violation of right or threat of violation of right the repository of the right has to necessarily enforce his right. There cannot be any enforcement of a right without seeking redressal. Therefore a right can be enforced only by making application to the authority who is under obligation to enforce the right or before an authority/forum which will ensure that the right is enforced. The circular issued by the Commissioner in 1997 after the judgment of the Supreme Court in **Pannalal Bansilal** (supra), though not delegated legislation, still it is binding on the subordinate officers. Under Section 3 read with Section 7 of the Act, the Commissioner of Endowments is a body corporate sole and under Section 8, the Commissioner is

entrusted with general superintendence and control of all Hindu religious and charitable institutions. In the considered opinion of this Court, 1997 circular does not in any manner contravene the provisions of the Act or the Rules.

The writ petition is devoid of merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

26 .03.2007.

L.R. Copy be marked.
(By order)
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[1] AIR 1996 SC 1023

[2] AIR 1996 SC 1023

[3] 2006(1) ALD 705